

# EXHIBIT B (PART 2)

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1 A. Not that I was aware of.

2 Q. Do you know whether your mother would  
3 ever have communications, written or verbal, with  
4 Lester Eber about the state of the Eber companies  
5 or the trust?

6 MR. BROOK: Objection to the form.

7 BY MR. RAMSEY:

8 A. I knew they spoke.

9 Q. How do you know they spoke?

10 A. My mother would tell me they had a  
11 conversation.

12 Q. Okay, so in the instances when your  
13 mother had any communications with Lester, you  
14 would generally learn about that from your mother?

15 MR. BROOK: Objection to the form.

16 BY MR. RAMSEY:

17 A. Actually, no.

18 Q. Okay.

19 A. There was nothing revealed in those  
20 conversations to me.

21 Q. She just said, "I spoke with Lester,"  
22 without giving you any clue as to the substance?

23 A. That is correct.

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1 Q. Did you ask about what the substance  
2 was?

3 A. No.

4 Q. Why not?

5 A. Because at that time I did not want to  
6 get into subjects that could be detrimental to her  
7 well-being.

8 Q. Why do you think those subjects could  
9 be detrimental to her well-being?

10 A. Because of what was happening to Eber  
11 Brothers and the problems that the company was  
12 incurring.

13 Q. If I'm understanding you correctly,  
14 that could have been upsetting to your mother?

15 A. Yes.

16 Q. So you wanted to spare her as much as  
17 possible?

18 A. That is correct.

19 Q. Let me show you what has been marked as  
20 Exhibit 17. Let me know when you've had a chance  
21 to review that (indicating).

22 MR. RAMSEY: Off the record.

23 (Whereupon, an off-the-record discussion was

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1 held.)

2 BY MR. RAMSEY:

3 Q. Have you had a chance to review Exhibit  
4 17, Mr. Kleeberg?

5 A. Yes.

6 Q. Have you ever seen that document  
7 before?

8 A. No.

9 Q. Exhibit 17 looks to be a letter dated  
10 December 15, 2009 from Lester to your mother?

11 A. Yes.

12 Q. Understanding that you hadn't seen it  
13 prior to today, but it looks like that he's talking  
14 generally about the recession and the impact on the  
15 Eber business?

16 MR. BROOK: Objection to the form.

17 BY MR. RAMSEY:

18 A. Yes.

19 Q. It's also discussing the inability to  
20 make a dividend payment that year?

21 MR. BROOK: Objection to the form.

22 BY MR. RAMSEY:

23 A. Yes.

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1 Q. In the second paragraph Lester writes,  
2 "To ease this burden," resulting from the lack of  
3 the dividend payment, "I propose to make a personal  
4 tax free gift to you in the amount of \$5,000.00  
5 which is enclosed." Do you see that sentence?

6 A. Yes.

7 Q. Do you have an understanding, whether  
8 that payment was made to your mother?

9 A. No.

10 Q. Did you ever have any discussions with  
11 your mother about Lester conveying to her some of  
12 the problems that the business was having?

13 A. Any discussions with her regarding the  
14 business having problems?

15 Q. With Lester, that she had discussions  
16 with Lester about the business.

17 A. I'm sorry. Please say that again.

18 Q. I'll start over.

19 Any discussions with your mother about  
20 Lester conveying to her either verbally or in  
21 writing any problems that the business was having  
22 in or around December of 2009?

23 MR. BROOK: Objection to the form.

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1 BY MR. RAMSEY:

2 A. She would have a discussion with me  
3 asking me what was really going on with the  
4 company.

5 Q. Okay, and was that your testimony a few  
6 minutes ago that you tried to soften the blow for  
7 lack of a better word so that she wasn't upset?

8 A. Well, I will -- I will take it one step  
9 further. My conversations with her would always  
10 refer back to, "You need to speak to your brother  
11 to get clarification if you have any questions."

12 Q. Okay, and I believe you told me in  
13 those instances when she did communicate with  
14 Lester, she might tell you that she had  
15 communications, but you were typically not privied  
16 to the substance of those communications?

17 A. That is correct.

18 Q. Okay, and just to be clear, you haven't  
19 seen Exhibit 17 and you don't recall a discussion  
20 with your mother about her receiving a letter from  
21 Lester in December of 2009?

22 A. That is correct.

23 Q. I show you what has been marked as

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1 Exhibit 18 (indicating).

2 A. Okay.

3 Q. Have you seen Exhibit 18 before?

4 A. No.

5 Q. The name "Sally Kleeberg" is written on  
6 Exhibit 18, correct?

7 A. Yes.

8 Q. Then there's some handwriting below it?

9 A. Yes.

10 Q. Does the handwriting appear to be that  
11 of your mother?

12 A. Yes.

13 Q. It says, "Thank you for the check. I  
14 appreciate it," and then it's signed "Sally",  
15 correct?

16 A. Yes.

17 Q. It looks like a photocopy of some type  
18 of correspondence note or thank you note?

19 A. That I couldn't answer.

20 Q. Are you aware whether your mom had  
21 correspondence or thank you notes that she would  
22 send to people as needed?

23 A. Was I aware of?

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1 Q. Did she have correspondence notes that  
2 she used?

3 A. Yes.

4 Q. Would this be consistent with one of  
5 those notes, its appearance anyway?

6 A. Yes.

7 Q. Do you recall any discussion or  
8 learning from any source that your mother received  
9 a personal check from Lester Eber to replace the  
10 loss of a dividend payment?

11 A. No.

12 Q. She never shared that with you?

13 A. No.

14 Q. As you sit here today, do you have any  
15 reason to dispute that such a check was sent to  
16 your mother by Lester?

17 A. No.

18 Q. That would be consistent with Exhibit  
19 18, your mother thanking Lester for the check?

20 MR. BROOK: Objection to the form.

21 BY MR. RAMSEY:

22 A. Yes.

23 Q. I'm going to show you next what we've



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1 marked as Exhibit 19. Let me know when you've had  
2 a chance to review it (indicating).

3 A. Okay.

4 Q. Have you had a chance to review Exhibit  
5 19?

6 A. Yes.

7 Q. Have you seen it before?

8 MR. BROOK: Objection to the form.

9 BY MR. RAMSEY:

10 A. Only with what has been provided to me  
11 for this case.

12 Q. Okay, so you've seen it in the context  
13 of this lawsuit? Well, let me identify it.  
14 Exhibit 19 is a handwritten letter from Lester to  
15 Sally, correct?

16 A. Yes.

17 Q. It's dated March 22, 2010, correct?

18 A. Yes.

19 Q. If I'm understanding what you just  
20 said, you've seen this document in the context of  
21 this lawsuit and you didn't see it  
22 contemporaneously with it being sent back in 2010?

23 A. That is correct.

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1 Q. What's the subject matter of Exhibit

2 19? What's Lester conveying to your mother?

3 MR. BROOK: Objection to the form.

4 BY MR. RAMSEY:

5 A. The current financial situation of  
6 Slocum and Lester's feeling of putting X amount of  
7 money into the company.

8 Q. Exhibit 19 references a loan that  
9 Lester advanced to the company that he's sharing  
10 with your mother?

11 A. Yes.

12 Q. It also references a \$4,000.00 check  
13 that he previously sent her to make up for the  
14 elimination of a distribution?

15 A. Yes.

16 Q. He then a little bit farther down  
17 Exhibit 9 indicates that he is enclosing an  
18 additional personal check in the amount of  
19 \$6,000.00?

20 A. Yes.

21 Q. Did you have a discussion of any of  
22 those items with your mother at about the time that  
23 this letter was written?

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1 A. No, I did not.

2 Q. As you sit here today, do you have any  
3 reason to dispute the accuracy of what Lester  
4 provided to your mother, the \$4,000.00 check and  
5 the \$6,000.00 check?

6 MR. BROOK: Objection to the form.

7 BY MR. RAMSEY:

8 A. No, I do not.

9 Q. Based upon what you knew about the  
10 state of the business back in 2010, was the message  
11 that Lester was conveying to your mom that there  
12 were some financial troubles and some business  
13 hardships accurate?

14 MR. BROOK: Objection to the form.

15 BY MR. RAMSEY:

16 A. That I wouldn't know because I was  
17 never made aware of what was going on in Slocum.

18 Q. Okay, but as far as Eber Brothers, it  
19 had already shut down, correct?

20 A. That is true.

21 Q. Okay, so do you have any reason to  
22 dispute the accuracy of what Lester was conveying  
23 to your mother at that time?

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1 MR. BROOK: Objection to the form.

2 BY MR. RAMSEY:

3 A. My only objection would be that it is  
4 very difficult in a franchise state to be in a very  
5 difficult situation where you are not making money  
6 and that there has to be a tremendous amount of  
7 influx of money.

8 Q. What specifically are you referring to  
9 in the letter that you're disagreeing with?

10 A. Well, this money is being put into, if  
11 I'm not mistaken, into Slocum, right?

12 Q. I'm just asking you based on the letter  
13 what you are disagreeing with in the content of the  
14 letter.

15 MR. BROOK: You're asking him to identify  
16 the sentence?

17 MR. RAMSEY: The sentence or the paragraph  
18 or if he's disagreeing with the accuracy of what  
19 Lester was conveying to his mother.

20 BY MR. RAMSEY:

21 A. I only disagree with the amount because  
22 I never saw that amount and nor was I ever told  
23 that that was the amount that was going to be put

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1 in there, so I have no proof that that actually  
2 took place.

3 Q. You don't know one way or the other?

4 A. No, I do not.

5 Q. You recall no discussions at all with  
6 your mother about this letter, the subject  
7 discussed in this letter, around the time it was  
8 sent?

9 A. No, I do not.

10 MR. BROOK: Objection to the form.

11 THE WITNESS: Sorry.

12 BY MR. RAMSEY:

13 A. No, I do not.

14 Q. I'm going to show you what's been  
15 marked as Exhibit 20 for identification  
16 (Indicating).

17 A. Okay.

18 Q. Have you seen Exhibit 20 before?

19 A. No, I have not.

20 Q. Have you seen Exhibit 20 in the context  
21 of this lawsuit?

22 A. Yes.

23 Q. Okay, so much like the previous

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1 document, you at least had seen it prior to this  
2 morning, but if I'm understanding you correctly,  
3 you didn't see it contemporaneously when it was  
4 sent?

5 A. That is correct.

6 Q. This is a letter dated April 2, 2010  
7 from Lester to your mother, correct?

8 A. Yes.

9 Q. Okay, and he's making an invitation to  
10 have her contribute some money to the business?

11 A. Yes.

12 Q. Specifically he's indicating that \$1.5  
13 million in capital is needed and is proposing that  
14 he, your mother and Audrey split that three ways,  
15 right?

16 MR. BROOK: Objection to the form.

17 BY MR. RAMSEY:

18 A. I don't see Audrey's name there.

19 Q. Okay, but your mother was offered a  
20 one-third interest, correct?

21 A. Yes.

22 Q. In the second to last --

23 A. No, backtrack for a second. No, that's

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1 not true. Could you restate that question?

2 Q. Of the \$1.5 million that Lester  
3 references in that letter, he's asking your mother  
4 whether she would be interested in contributing  
5 one-third of that, correct?

6 A. Right.

7 Q. In the second to last paragraph of  
8 Exhibit 20, Lester indicates that he's already  
9 advanced the company \$500,000.00. Do you see that?

10 A. In the second paragraph?

11 Q. In the second to last.

12 A. Second to last, yes.

13 Q. He also again discusses throughout the  
14 letter some of the business difficulties that the  
15 company's facing?

16 A. Only the liquidity, yes.

17 Q. Okay, and he indicates that the  
18 proposed \$1.5 million loan in the middle paragraph  
19 would be secured by Eber Brothers Wine and Liquor  
20 and Eber Metro's equity interest in the Connecticut  
21 business?

22 A. Yes.

23 Q. Did your mother have any discussion

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1 with you about this letter when she received it?

2 A. No.

3 Q. As of 2010, did your mother have any  
4 issue, health issue or otherwise, that would impede  
5 her ability to understand and comprehend documents  
6 that were sent to her?

7 A. In 2010, no.

8 Q. In other words, there was no competency  
9 issue in 2010?

10 A. No.

11 Q. The letter, Exhibit 20, also indicates  
12 that it's enclosing copies of loan documents. Do  
13 you see that in the last paragraph?

14 A. Yes.

15 Q. In the last sentence, Lester writes,  
16 "Finally, please let me know if you would like any  
17 additional information about Eber-Connecticut LLC."  
18 Do you see that?

19 A. Yes.

20 Q. Were you aware at the time in 2010 that  
21 any loan documents or proposed loan documents had  
22 been provided to your mother?

23 A. No.



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1 Q. I'm going to show you what we've marked  
2 as Exhibit 21. It's a relatively thick stack of  
3 documents, so I'm not going to ask you to go  
4 through all of them. Take as much time as you want  
5 to review them. I just have a couple of questions  
6 on them. It won't be long (indicating).

7 A. So why don't you ask the questions and  
8 then point me to where you want me to read?

9 Q. Okay, the first two pages of Exhibit 21  
10 appear to be a document entitled Non-Disclosure  
11 Agreement. Do you see that?

12 A. Yes.

13 Q. It looks like it's filled out for Sally  
14 Kleeberg to sign and is dated April 2, correct?

15 A. Yes.

16 Q. 2010, correct?

17 A. Yes.

18 Q. The second page, it's not signed by  
19 your mother, correct?

20 A. Correct.

21 Q. All right, following the Non-Disclosure  
22 Agreement, it looks like a Guaranty Agreement or a  
23 loan document, correct?

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1 MR. BROOK: Objection to the form.

2 BY MR. RAMSEY:

3 A. Guaranty?

4 Q. Let me try it this way rather than go  
5 page by page. Exhibit 20 references loan documents  
6 that Lester was supplying to your mother, correct?

7 A. Yes.

8 Q. Do you have any reason to dispute that  
9 the loan documents that Lester was referencing were  
10 actually supplied to your mother for her review?

11 A. Do I have any reason to dispute it?

12 Q. Yes.

13 A. I cannot really respond to that because  
14 my mother never brought it up to me, so I have no  
15 idea whether she received it or not.

16 Q. Right, she didn't discuss it with you?

17 A. No.

18 Q. Yes, but you hadn't learned from any  
19 other source that no loan documents were, in fact,  
20 ever provided to her, the proposed loan documents?

21 A. Right.

22 MR. RAMSEY: Off the record.

23 (Whereupon, an off-the-record discussion was

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1 held.)

2 MR. RAMSEY: We'll break for lunch at this  
3 point.

4 Whereupon, at 12:10 PM, the parties broke  
5 for a lunch break until 12:55 PM.)

6 BY MR. RAMSEY:

7 Q. All right, back on the record, ready to  
8 continue, Mr. Kleeberg?

9 A. Yes.

10 Q. I show you what we've marked at Exhibit  
11 22 for identification (indicating).

12 A. Okay.

13 Q. Have you ever seen Exhibit 22 before?

14 A. Before? Can you give me a time frame?

15 Q. Sure, as you sit here today, have you  
16 ever seen Exhibit 22 before?

17 MR. BROOK: Before today.

18 BY MR. RAMSEY:

19 Q. Before today.

20 A. Before today?

21 Q. Yes.

22 A. Yes.

23 Q. Okay, and then let me jump ahead and

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1 see if I can short circuit this. Is this another  
2 example of a document that you've seen in  
3 connection with this lawsuit that you didn't see at  
4 the time it purports to have been created?

5 A. That is correct.

6 Q. Exhibit 22 is another letter from  
7 Lester to your mother, correct?

8 A. Yes.

9 Q. This one is dated April 27, 2010?

10 A. Yes.

11 Q. In sum and substance, Exhibit 22 is a  
12 letter in which Lester's conveying to your mother  
13 his thanks for considering the investment  
14 opportunity he discussed earlier and that he  
15 understands she's not looking to take that up? Is  
16 that a fair summary of it?

17 MR. BROOK: Objection. Objection to the  
18 form.

19 BY MR. RAMSEY:

20 A. Yes.

21 Q. Did your mother ever convey to you that  
22 she had turned down the opportunity to invest money  
23 in the Eber companies?

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1 MR. BROOK: Objection to the form.

2 BY MR. RAMSEY:

3 A. No, I never had that discussion with  
4 her.

5 Q. When is the first time that you learned  
6 that your mother had been presented with such an  
7 opportunity?

8 MR. BROOK: Objection to the form.

9 BY MR. RAMSEY:

10 A. During our -- during this lawsuit.

11 Q. Okay, so until you received some  
12 documents or other information in this lawsuit,  
13 that was unknown to you?

14 A. That is correct.

15 Q. I show you what we've had marked as  
16 Exhibit 23. Let me know when you've had a chance  
17 to review that (indicating).

18 A. Okay.

19 Q. All right, I'll tell you what. In the  
20 interest of time, I'm going to show you Exhibit 24  
21 at the same time and ask you questions about both  
22 of them (indicating).

23 A. Okay.

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1 Q. Just to set the table, Exhibit 23 is an  
2 October 27, 2010 letter from Lester to your mother  
3 and Exhibit 24 is a November 19, 2010 letter from  
4 Lester to your mother, correct?

5 A. Yes.

6 Q. Prior to this lawsuit, had you ever  
7 seen either Exhibit 23 or Exhibit 24?

8 A. No.

9 Q. Have you seen either or both of these  
10 exhibits in the context of this lawsuit?

11 A. No.

12 Q. You've had a chance to read them?

13 A. Yes.

14 Q. For example, Exhibit 23 first, it  
15 appears to be a letter indicating to your mother  
16 that health care costs could be covered in whole or  
17 in part from principal from the trust?

18 A. Yes.

19 Q. Did you ever have any discussions with  
20 your mother whether or not there was a  
21 consideration for using trust assets to pay for her  
22 health care costs?

23 A. No.

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1 Q. In 2010, October of 2010, how were your  
2 mother's health care costs paid for generally?

3 A. How were they paid for?

4 Q. Yes.

5 A. I do not know.

6 Q. Was she on Medicare?

7 A. In 2010 she could be. I don't know.

8 Q. Do you know whether she had any private  
9 insurance or supplemental insurance?

10 A. I don't know.

11 Q. Had you ever discussed any of your  
12 mother's health issues or health expenses with her?

13 A. No, she never brought it up to me.

14 Q. Who would your mom have spoken with  
15 about issues like that, either health concerns or  
16 the payment of health care costs?

17 A. Health concerns would be with my  
18 sister. Health costs I have no idea.

19 Q. Other than the health care expenses  
20 that Exhibit 23 is discussing, were you ever aware  
21 of any principal from the trust being used for any  
22 other purpose in or about this time period?

23 A. Could you be more specific?

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1 Q. Sure, the subjects of both Exhibit 23  
2 and Exhibit 24 is using principal from the trust to  
3 pay or proposing to use principal from the trust to  
4 pay for your mom's health care costs. I'm  
5 wondering if you were aware from any source whether  
6 the principal from the trust was used to pay either  
7 other individual's health care costs or other costs  
8 not related to costs that certain individuals might  
9 have?

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 A. You mean outside of my mother?

13 Q. Yes.

14 A. Yes.

15 Q. All right, well, who were you aware of  
16 that were receiving payments from the trust,  
17 principal payments?

18 A. My niece.

19 Q. Erica Stein?

20 A. Yes.

21 Q. We'll talk about that a bit more in a  
22 moment, but were those for costs associated with an  
23 illness --



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1 A. Yes.

2 Q. (Continuing) that she had?

3 A. Yes.

4 Q. Exhibit 24 indicates Lester indicating  
5 to your mother that he had been paying her medical  
6 bills from his own personal resources. Do you see  
7 that?

8 A. Yes.

9 Q. Did your mother make you aware in any  
10 way that Lester was paying this money out of his  
11 pocket for some of her medical costs?

12 MR. BROOK: Objection to the form.

13 BY MR. RAMSEY:

14 A. No.

15 Q. Do you have any reason to dispute the  
16 accuracy of this letter?

17 MR. BROOK: Objection to the form.

18 BY MR. RAMSEY:

19 A. I would not know because I was not  
20 aware of this.

21 Q. Your mother didn't share that with you?

22 A. No.

23 Q. Was there ever a time when your mother

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1 needed some type of procedure, health care related  
2 expense, where she was unable to afford it?

3 A. No.

4 Q. I should ask you this with respect to a  
5 couple of the previous exhibits and you can flip  
6 back to them if you need to. The invitation by  
7 Lester to make a one-third contribution of that  
8 \$1.5 million, at that time did your mother have the  
9 assets to do that if she had so chosen?

10 A. I don't know. I don't know. She never  
11 discussed that with me.

12 Q. Who would she discuss her personal  
13 assets with?

14 A. Nobody.

15 MR. BROOK: Objection to the form.

16 BY MR. RAMSEY:

17 Q. Would she discuss that with Lisa?

18 A. No.

19 Q. Did she have an adviser, a financial  
20 adviser, that she used? Do you know?

21 A. Yes.

22 Q. Who was that?

23 A. Daniel Abelson, A-B-E-L-S-O-N.

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1 Q. Where is Mr. Abelson located?

2 A. Buffalo, New York.

3 Q. Is he with a firm or is he on his own?

4 A. He is a financial adviser.

5 Q. With a practice group or is he on his  
6 own?

7 A. On his own.

8 Q. Is it your understanding that financial  
9 decisions that you knew that your mother had to  
10 make would be made in consultation with Mr.  
11 Abelson?

12 MR. BROOK: Objection to the form.

13 BY MR. RAMSEY:

14 A. She never told me that, but that was  
15 who -- that was her financial adviser.

16 Q. I believe you told me that Lisa is the  
17 executor or was the executor of your mom's estate?

18 A. Yes.

19 Q. Did Lisa discuss with you the assets  
20 that were included in the estate at the time of  
21 your mom's death?

22 A. Yes.

23 Q. Based on those discussions with Lisa,

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1 would your mom have had the assets in 2010 to make  
2 the \$500,000.00 investment that Lester was  
3 offering?

4 MR. BROOK: Objection to the form.

5 BY MR. RAMSEY:

6 A. Yes.

7 Q. The 4,000, approximately \$4,000.00, a  
8 month that you received from investments, is that,  
9 the source of those monies, an inheritance from  
10 your mother?

11 A. Yes.

12 Q. Is it your understanding that Lisa  
13 receives approximately the same amount as far as an  
14 inheritance?

15 A. No.

16 Q. You don't understand one way or the  
17 other or that's not your understanding?

18 A. It's not my understanding.

19 Q. What does Lisa receive on a monthly  
20 basis?

21 A. I have no idea.

22 Q. So you don't know one way or the other?

23 A. I, correct.

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1 Q. Okay, so you just don't know one way or  
2 the other?

3 A. I don't know one way or the other.

4 Q. I show you what is marked as Exhibit  
5 25. Let me know when you've had a chance to review  
6 that (indicating).

7 A. Okay.

8 Q. Exhibit 25 is another letter from  
9 Lester to your mother, correct?

10 A. Yes.

11 MR. BROOK: Objection to the form.

12 THE WITNESS: Oh, I'm sorry.

13 BY MR. RAMSEY:

14 A. Yes.

15 MR. RAMSEY: What's the objection?

16 MR. BROOK: That's not Lester's signature on  
17 it.

18 MR. RAMSEY: Oh, you're right. I apologize.

19 BY MR. RAMSEY:

20 Q. It's on Lester Eber's letterhead, is  
21 that correct?

22 A. Yes.

23 Q. It's dated December 13, 2010?

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1 A. Yes.

2 Q. Is this another one of the document  
3 where you've seen in the context of this lawsuit  
4 but did not see it contemporaneously with when it  
5 purports to have been sent?

6 A. No.

7 Q. This is something you saw prior to the  
8 lawsuit?

9 A. No.

10 Q. When was the first time you'd seen this  
11 document?

12 A. Today.

13 Q. Okay, so in the context of this  
14 lawsuit, you haven't had a chance to review Exhibit  
15 25?

16 A. That is correct.

17 Q. You've had a chance to review it after  
18 I've handed it to you though?

19 A. Yes.

20 Q. It looks to be a letter to your mother  
21 again on Lester Eber's letterhead from an  
22 individual, Janet Lissow. Do you know who Janet  
23 Lissow is?

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1 A. Yes.

2 Q. Who is she?

3 A. Lester's personal secretary.

4 Q. Do you know whether from time to time

5 Lester would have his personal secretary send

6 correspondence on his behalf?

7 A. Yes.

8 Q. Okay, so it wouldn't be unusual that

9 Janet Lissow would be sending correspondence to

10 your mother on Lester Eber's letterhead?

11 MR. BROOK: Objection to the form.

12 BY MR. RAMSEY:

13 A. I don't -- I don't think that would be

14 the norm. I think Lester would be the one who

15 would be sending them.

16 Q. Okay, but this is his personal

17 secretary anyway?

18 A. Yes.

19 Q. Okay, and the substance of Exhibit 25

20 appears to be a confirmation to your mother that

21 she's decided to manage the payment of her medical

22 bills on her own? That's what the letter says

23 anyway?

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1           A.    That's what the letter says.

2           Q.    Based upon what you told me a few  
3 minutes ago about the assets in your mother's  
4 estate at the time of her death, is it fair to say  
5 that she had enough assets to pay for her own  
6 medical bills?

7           A.    Yes.

8           Q.    I understand you weren't privied to  
9 these discussions at the time they were happening  
10 back in 2010, but have you learned the reason why  
11 there was a consideration that she was going to be  
12 receiving principal to go towards medical expenses  
13 when she was able to independently cover her  
14 medical costs?

15           MR. BROOK:  Objection to the form.

16           BY MR. RAMSEY:

17           A.    There was never a discussion.

18           Q.    You don't know one way or the other?

19           A.    No, I do not.

20           Q.    I show you what's been marked as  
21 Exhibit 26 (indicating).

22           A.    Okay.

23           Q.    Exhibit 26 is an e-mail from an Elliott



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1 Gumaer to an R. Hawks at cnb.com, is that accurate?

2 A. Yes.

3 Q. Is that what it purports to be?

4 A. Yes.

5 Q. Prior to today, had you ever seen

6 Exhibit 26?

7 A. No.

8 Q. Have you had a chance to read it after

9 I've handed it to you?

10 A. Yes.

11 Q. The substance of the e-mail from Mr.  
12 Gumaer to -- and I'll represent to you it is Rick  
13 Hawks at CNB -- again is dealing with the  
14 possibility of the trust paying your mother's  
15 supplemental medical expenses, correct?

16 A. Yes.

17 Q. It looks like on the third or so line  
18 that it would have been intended to continue her  
19 Medicare supplemental insurance?

20 A. Yes.

21 Q. Okay, and then the next sentence goes  
22 on to say that in sum and substance Lester had  
23 maintained the cost of that from his personal

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1 resources for some period of time?

2 A. Yes.

3 Q. Again you have no recollection of any  
4 discussion with your mother about any supplemental  
5 medical expenses or the fact that Lester was paying  
6 them?

7 A. No.

8 Q. Do you know whether your mother had any  
9 of those discussions with anyone else?

10 A. No, I do not.

11 Q. Have you ever discussed that issue with  
12 either Lisa Stein or Audrey Hays?

13 A. No.

14 Q. I show you what has been marked as  
15 Exhibit 27 (indicating).

16 A. Okay.

17 Q. Had you ever seen prior to today, had  
18 you seen Exhibit 27?

19 A. No.

20 Q. Exhibit 27 purports to be a listing of  
21 medical expenses of your mother paid by Mr. Eber,  
22 Lester Eber, in 2010. Is that what this appears to  
23 be anyway?

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1           A.    I don't see where it says that Lester  
2   paid these.

3           Q.    Right at the top, the top left-hand  
4   corner of the page.

5           A.    "Sally Kleeberg's expenses paid", oh,  
6   "Paid by Mr. Eber", sorry, yes.

7           Q.    It looks like the total amount in 2010  
8   anyway at least set forth on Exhibit 27 was a  
9   little over \$6,000.00?

10          A.    That is correct.

11          Q.    Any discussion once again that you had  
12   with your mother in 2010 about medical expenses  
13   that Lester was paying?

14          A.    No, she did not have any discussion  
15   with me on medical expenses except that she always  
16   said that whatever my father got when he passed  
17   away she would receive the same.

18          Q.    Did you take that to mean she was going  
19   to receive it in periodic distributions or in a  
20   lump sum?

21          A.    I have no idea.

22          Q.    You took that to include covering her  
23   medical expenses, if necessary?

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1           A.    I took it as whatever my father was  
2   receiving, which I did not know what he was  
3   actually receiving, that she would receive the  
4   exact same amount and that was a promise made to  
5   her when my dad passed away.

6           Q.    When you say "receive the exact same  
7   amount", did you have an understanding whether that  
8   was a regular distribution, in an as needed payment  
9   or what?

10          A.    No, I assumed that it was something  
11   that was given to my father on a monthly or annual  
12   basis.

13          Q.    Okay, and do you have any knowledge one  
14   way or the other whether your mother did, in fact,  
15   receive whatever your dad had been receiving?

16          A.    I'm sorry. Please rephrase that.

17          Q.    Do you have any knowledge to confirm  
18   whether or not your mom received what your dad had  
19   been receiving as you envisioned was what was  
20   intended?

21          MR. BROOK:  Objection to the form.

22          BY MR. RAMSEY:

23          A.    I have no knowledge as far as actually

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1 seeing anything.

2 Q. Okay, and specifically with respect to  
3 Exhibit 27, the medical expenses, do you have any  
4 reason or basis to dispute that this amount was  
5 paid for your mother's medical expenses by Lester  
6 in 2010?

7 A. No.

8 Q. I'll show you what has been marked as  
9 Exhibit 28 (indicating).

10 A. Okay.

11 Q. Prior to today, had you ever seen  
12 Exhibit 28?

13 A. No.

14 Q. Have you had a chance to review Exhibit  
15 28?

16 A. Yes.

17 Q. Generally speaking, is it a letter to  
18 your mother seeking consent to the trust to making  
19 distributions for the benefit of Erica Stein?

20 A. Yes.

21 Q. Were you aware at some point a request  
22 was made to the trust beneficiaries to consent to  
23 such distributions?

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1 A. Yes.

2 Q. How did you become aware of that?

3 A. My sister made me aware of it.

4 Q. When do you recall your sister making  
5 you aware of it?

6 A. Gosh, probably a few years, maybe four  
7 or five years, I'm not sure on the date, but it was  
8 sometime after my niece had her liver transplant.

9 Q. Do you know whether your sister had  
10 conversations with your mother encouraging or  
11 confirming that your mother would consent to such  
12 distributions?

13 A. Yes.

14 Q. Ultimately, as you understand it, your  
15 mother did consent?

16 A. Yes.

17 Q. Do you know the amount of money from  
18 the trust either in sum or in whatever  
19 distributions it was sent out that Erica Stein  
20 received?

21 A. Not at the time.

22 Q. As you sit here today, do you have any  
23 sense of how much money Erica Stein received in

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1 distributions?

2 A. I have a sense.

3 Q. What's your sense?

4 A. I think it was \$1,100.00, something  
5 like that, or 1,200-something, somewhere in that  
6 neighborhood.

7 Q. On a monthly basis?

8 A. I'm not sure.

9 Q. The \$1,100.00 or \$1,200.00, is that the  
10 total amount of your understanding or is that the  
11 amount of the distribution however often it  
12 happened?

13 A. I was under the impression -- and again  
14 my numbers might be incorrect -- that this was paid  
15 on a monthly basis.

16 Q. In addition to your mother, was it your  
17 understanding that the other trustees had to sign  
18 off on those distributions?

19 A. That is correct.

20 Q. One of the trustees was Lester Eber?

21 A. Yes.

22 Q. It's your understanding that he  
23 consented as well?

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1 A. Yes.

2 Q. Do you know who the other trustee was?

3 A. It would be Gumaer.

4 Q. Elliott Gumaer?

5 A. Elliott Gumaer.

6 Q. As far as you know, was there ever any

7 objection from anyone to the distributions for

8 Erica Stein's benefit?

9 A. Yes.

10 Q. Who objected?

11 A. David Eber.

12 Q. Who's David Eber?

13 A. David Eber is Lester Eber's son.

14 Q. What's your understanding of what David

15 Eber's objection was?

16 A. David Eber did not think it was fair to

17 start taking money out of the trust.

18 Q. Where did you learn that information?

19 A. From David himself.

20 Q. When did he convey that to you?

21 A. Soon after the request was made and the

22 letter went out, the letter went out requiring

23 everyone to sign off on it.



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1 Q. When he conveyed his disagreement with  
2 the proposal, was that an in-person conversation  
3 you had with him or on the phone?

4 A. On the phone.

5 Q. Do you know where David Eber lives  
6 currently?

7 A. I believe in New York.

8 Q. What about at the time you had the  
9 phone conversation with him?

10 A. Like I said, it was soon after the  
11 request was made.

12 Q. Was he living in the same location as  
13 far as you know at that point?

14 A. In New York, I don't know if it was the  
15 same address but in New York.

16 Q. To your understanding, did David need  
17 to sign off on the distributions in order for that  
18 to happen?

19 A. Yes.

20 Q. Do you know if he ultimately did so?

21 A. Yes.

22 Q. So whatever concerns he had, he  
23 ultimately agreed to the distributions?

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1 A. Yes.

2 Q. I want to talk to you next about the  
3 lawsuit itself.

4 A. Mmmmm, yes, I'm sorry.

5 MR. RAMSEY: I can mark this, if we need to,  
6 Brian, but I'm just referring to the Second Amended  
7 Complaint at this point.

8 MR. BROOK: Well, if you're going to be  
9 referring to it, I think it should be marked.

10 MR. RAMSEY: All right, fair enough. Fair  
11 enough.

12 The follow was marked for Identification:  
13 KLEEGERG EXH. 34 Second amended complaint.

14 BY MR. RAMSEY:

15 Q. Now this lawsuit was filed in 2016,  
16 correct?

17 A. Yes.

18 Q. Okay, and I've had this marked as  
19 Exhibit 34 and feel free to refer to it if you need  
20 although I'm not going to ask at this point anyway  
21 any specific questions about the document, but  
22 Exhibit 24 is designated as the Second Amended  
23 Complaint. Are you aware that there have been a

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1 couple of versions of the Complaint for lack of a  
2 better word (indicating)?

3 A. Yes.

4 Q. Each version alleges in sum and  
5 substance that you, Lisa and Audrey became aware of  
6 what I'll call in your view the objectionable  
7 transactions or actions that are the subject of the  
8 Complaint, you became aware of that in about 2015  
9 as a result of an Internet search performed by  
10 Lisa, is that accurate?

11 A. Yes.

12 MR. BROOK: Objection to the form.

13 THE WITNESS: I'm sorry.

14 BY MR. RAMSEY:

15 A. Yes.

16 Q. How did you first learn of this  
17 Internet search that Lisa performed?

18 A. Lisa called me on the phone and told me  
19 to, I believe, look at these articles. I think she  
20 e-mailed them to me and then asked me to get back  
21 to her with my opinion.

22 Q. What were the articles that she  
23 e-mailed to you? What was the content?

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1           A.    There were a couple of articles that  
2   were written in the Rochester Journal -- I think  
3   it's the Rochester Journal -- by a reporter that  
4   had originally started reporting about Eber  
5   Brothers way back when we ended up liquidating the  
6   company and then follow-up information that showed  
7   how Slocum and Sons was acquired.

8           Q.    What, to your understanding, was the  
9   purpose of Lisa providing those articles to you?

10          A.    That she was unaware that Slocum and  
11   Sons was no longer a part or she was questioning  
12   whether or not Slocum and Sons was still a part of  
13   the Eber companies.

14          Q.    What, if anything, did you do after  
15   reviewing those articles?

16          A.    I took some time to think it through  
17   because I did not believe that that actually took  
18   place, and then after reading those articles and  
19   then discussing it with an attorney that I met on  
20   an airplane, believe it or not, I started to  
21   realize that there was something wrong in the way  
22   that was acquired.

23          Q.    What's the name of the attorney you

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1 spoke with?

2 A. His first name's Steve. I can't  
3 remember his last name.

4 Q. Do you have Steve's contact information  
5 anywhere in your records?

6 A. I might.

7 Q. I'll ask you to look through your  
8 records. If you have any contact information, give  
9 it to your attorney, your current attorney.

10 A. Okay.

11 MR. BROOK: I can provide that to you if you  
12 want. I can tell you more about that because  
13 that's how I got the case.

14 Off the record.

15 (Whereupon, an off-the-record discussion was  
16 held.)

17 BY MR. RAMSEY:

18 Q. Each version of the Complaint discusses  
19 a 2012 transaction proceeding involving a company  
20 known as Alexbay. Are you familiar with that?

21 A. Yes.

22 Q. Do you recall a conversation you had  
23 with Lester indicating that you had first learned

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1 about that 2012 Alexbay proceeding from Mark Stein?

2 A. That I?

3 Q. Yes.

4 A. No, no.

5 Q. Well, first of all, who is Mark Stein?

6 A. Mark Stein is my brother-in-law, Lisa  
7 Stein's husband.

8 Q. Do you recall a conversation you had  
9 with Mark separate and apart from the e-mail from  
10 Lisa with these articles talking about this 2012  
11 Alexbay transaction proceeding?

12 A. Prior to this?

13 Q. Yes.

14 A. No.

15 Q. What about subsequent to Lisa sending  
16 you those articles? Did you have any discussions  
17 with Mark Stein?

18 A. I brought it up to him just to see if  
19 he had any inclination.

20 Q. What do you recall Mark's response to  
21 be?

22 MR. BROOK: I'm going to object and instruct  
23 the witness not to answer on the grounds of I

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1 believe Mark Stein is an attorney and that he was  
2 seeking legal advice in that situation.

3 BY MR. RAMSEY:

4 Q. Well, let me ask you this. Did you  
5 retain Mark Stein as an attorney?

6 A. No.

7 Q. So you were asking him brother- in-law  
8 to brother-in-law?

9 MR. BROOK: Objection to the form.

10 BY MR. RAMSEY:

11 A. Yes.

12 Q. Okay, so what did Mr. Stein convey to  
13 you in response to your questions?

14 MR. BROOK: The same instruction, don't  
15 answer.

16 MR. RAMSEY: He just indicated he hadn't  
17 retained him and he was asking him as a  
18 brother-in-law.

19 MR. BROOK: You put words in his mouth. You  
20 didn't ask him at all any sort of question that  
21 would go to what was the nature of the advice that  
22 he was seeking from him and why he was asking him  
23 as opposed to someone else on the street or another

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1 family member.

2 MR. RAMSEY: He just said he wasn't seeking  
3 legal advice.

4 MR. BROOK: He did not say that. He said  
5 that he did not retain him.

6 BY MR. RAMSEY:

7 A. I did not say that I wasn't seeking  
8 legal advice.

9 Q. Okay, but you did say you didn't retain  
10 Mr. Stein? You did not retain Mr. Stein?

11 A. No.

12 Q. Is there any document indicating that  
13 he was going to serve as your lawyer for the  
14 purpose of exploring what your sister had learned  
15 vis-a-vis these articles?

16 A. Any documents?

17 Q. Yes.

18 A. No.

19 Q. Once again I'll ask what did Mr. Stein  
20 convey to you in response to your questions to him  
21 about these articles?

22 MR. BROOK: Same instruction, don't answer  
23 that.



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1 BY MR. RAMSEY:

2 Q. All right, well, I don't want to have  
3 to bring you back here, but let's note this in the  
4 transcript and we'll let the judge decide on that.

5 Was the conversation that you had with Mr.  
6 Stein before or after your airplane conversation  
7 with the lawyer Steve?

8 MR. RAMSEY: I'm not asking him for the  
9 substance of anything, so --

10 MR. BROOK: Answer.

11 Let the record reflect that the witness  
12 looked at me. He can answer the question as to the  
13 timing of when things occurred.

14 That's fine, if you recall.

15 BY MR. RAMSEY:

16 A. It was prior to my trip when I met this  
17 attorney.

18 Q. So your conversation with Steve  
19 predated your conversation with Mr. Stein or vice  
20 versa?

21 A. Vice versa.

22 Q. Okay, so it was the conversation with  
23 Mr. Stein first and then happenstance you were on a

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1 plane with an attorney and you discussed it with  
2 him?

3 A. That is correct.

4 MR. CALIHAN: Off the record.

5 (Whereupon, an off-the-record discussion was  
6 held.)

7 BY MR. RAMSEY:

8 Q. When you had the conversation with Mr.  
9 Stein, was anyone else present?

10 A. No.

11 Q. Did you ever have any conversations  
12 with Mr. Stein about the same subject matter when  
13 Lisa Stein was present, the three of you?

14 A. No.

15 Q. Did you ever have any conversations  
16 with Mr. Stein about the same subject matter when  
17 any other person was present?

18 A. No.

19 Q. Did you ever retain Steve, the lawyer  
20 from the plane, to represent you in connection with  
21 anything you learned from the articles that Lisa  
22 sent to you?

23 A. Yes.

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1 Q. You did retain him at some point?

2 A. Briefly.

3 MR. BROOK: I'm going to object to the form  
4 on the grounds of vagueness as to the word  
5 "Retained".

6 BY MR. RAMSEY:

7 Q. Is there a written engagement letter or  
8 retainer letter between you and this Steve that you  
9 met on the plane?

10 A. There was a verbal agreement and then a  
11 rejection letter that came out soon after.

12 Q. The rejection letter was from Steve to  
13 you or from you to Steve?

14 A. From Steve to me.

15 Q. Declining representation or terminating  
16 it?

17 A. Yes.

18 Q. Which was it? Was it declining it or  
19 was it terminating it?

20 A. Declining it.

21 Q. Do you still have a copy of that  
22 letter?

23 A. I do not know. I'd have to look at my

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1 records.

2 Q. Okay, and I'd ask you to do so, and if  
3 you find it, give it to Mr. Brook, please.

4 A. Okay.

5 Q. Other than that letter, did you  
6 exchange any e-mails with the lawyer Steve about  
7 the representation or potential representation?

8 A. Yes.

9 Q. Do you still have copies of those  
10 e-mails?

11 A. I would have to look.

12 Q. Okay, once again I would ask you to  
13 check, and if you have them, send them to Mr.  
14 Brook.

15 At some point subsequent to receiving the  
16 rejection letter from Steve, did you engage another  
17 attorney in this matter?

18 A. No.

19 Q. Well, at some point you engaged Mr.  
20 Brook, right?

21 A. Yes.

22 Q. Prior to Mr. Brook, did you engage  
23 anybody else?

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1 A. No.

2 Q. How soon after receiving the letter  
3 from Steve did you engage Mr. Brook?

4 A. Very shortly after.

5 Q. Can you recall approximately when that  
6 was, the month and year?

7 A. I can only tell you that it was  
8 probably within thirty to sixty days we retained  
9 Mr. Brook after Steve not rejected but declined to  
10 take on our case.

11 Q. Okay, and how long after being provided  
12 with the articles from Lisa was it that you  
13 retained Mr. Brook?

14 A. I'll have to say six months.

15 Q. Was there a reason or do you have an  
16 understanding why the lawsuit wasn't ultimately  
17 filed until the following year then?

18 MR. BROOK: Objection to the form.

19 BY MR. RAMSEY:

20 A. Why it wasn't? Because of -- do I  
21 have? No.

22 Q. Were there discussions amongst you,  
23 Lisa and Audrey about whether to proceed with the

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1 lawsuit?

2 MR. BROOK: Objection.

3 BY MR. RAMSEY:

4 A. Yes.

5 Q. How did those discussions take place?

6 Were they in person?

7 A. No.

8 Q. On the phone?

9 A. Yes.

10 Q. Multiple discussions between the three

11 of you?

12 A. Yes.

13 Q. What was the sum and substance of those

14 discussions?

15 A. That we needed to speak with an  
16 attorney to give us advice on how or if we should  
17 proceed.

18 Q. Did you personally have any reluctance  
19 in proceeding with the lawsuit given how good Eber  
20 Brothers and Lester Eber had been to you over the  
21 years?

22 MR. BROOK: Objection to the form.

23 BY MR. RAMSEY:

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1           A.    An interesting question, initially I  
2    had to really think about it, but after reading the  
3    articles and seeing how it was orchestrated, I had  
4    no objection on moving forward.

5           Q.    When you say "seeing how it was  
6    orchestrated", what do you mean?

7           A.    I mean by the way it was acquired out  
8    of the family business.

9           Q.    How what was acquired?

10          A.    Slocum and Sons.

11          Q.    Your basis of the understanding of that  
12    were the two articles that Lisa sent you?

13          A.    Yes.

14          Q.    Any other basis of the information as  
15    to what was orchestrated in your words?

16          A.    Just give me a second.

17          MR. BROOK: I just want to advise the  
18    witness to the extent that his answer is based on  
19    legal advice received not to disclose the legal  
20    advice that was received. That's all.

21                You can otherwise answer the question.

22          BY MR. RAMSEY:

23          A.    Please restate the question.

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1 MR. RAMSEY: Can you read that question  
2 back?

3 (The above-requested question was then read  
4 by the reporter.)

5 BY MR. RAMSEY:

6 Q. Other than the two articles that you  
7 already referenced.

8 A. Not that I can recall.

9 Q. The Second Amended Complaint, which  
10 I've marked as Exhibit 34 and there's actually, as  
11 I imagine you're aware, there's a pending  
12 application for permission to file the Third  
13 Amended Complaint, have you read each version of  
14 the Complaint?

15 A. I had seen it but not read it  
16 thoroughly.

17 Q. Is it fair to say you weren't the one  
18 who prepared the Complaint?

19 A. I was not.

20 Q. There are numerous factual allegations  
21 in both the original Complaint, the First Amended  
22 Complaint, the Second Amended Complaint and the  
23 Third Amended Complaint. I don't want to get into



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1 any discussions that you had with your lawyers.

2 What I want to know is if you were the source of  
3 any of the factual allegations that were made in  
4 the various versions of the Complaint.

5 MR. BROOK: Objection to the form.

6 BY MR. RAMSEY:

7 A. Since you're not going to get into it,  
8 I can't really answer that question because I don't  
9 know specifically what you're asking.

10 Q. Are you aware of -- and we'll focus on  
11 the Second Amended Complaint and feel free to  
12 reference it -- are you aware of the specific  
13 allegations that are being made?

14 A. I would have to look at that Second  
15 Amended Complaint and ascertain that.

16 Q. Without referring to it and you're  
17 welcome to do it, but before you refer to it, as  
18 you sit here today, do you have an understanding of  
19 what is being alleged in that Second Amended  
20 Complaint?

21 MR. BROOK: Objection to the form.

22 BY MR. RAMSEY:

23 Q. Before you look at it, I'm just asking

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1 you if you didn't look at it, would you be able to  
2 tell me what's being alleged?

3 A. No.

4 Q. As you sit here today, do you recall  
5 providing specific factual allegations to be  
6 included in any version of the Complaint?

7 A. I provided --

8 MR. BROOK: Objection to the form.

9 BY MR. RAMSEY:

10 A. I provided whatever my attorney asked  
11 me that I knew at the time and I only answered I  
12 only gave him information that he had asked me.

13 Q. If I understood your testimony from a  
14 few minutes ago, you've never read cover to cover  
15 the Second Amended Complaint?

16 A. Not cover to cover, no.

17 Q. Okay, and would that also be true for  
18 the proposed Third Amended Complaint?

19 A. That would be true.

20 Q. Would that be true of the original  
21 Complaint?

22 A. The original Complaint, I believe I did  
23 read it cover to cover.

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1 Q. Do you recall doing that before it was  
2 filed?

3 A. Yes.

4 Q. Do you know whether Lisa Stein and  
5 Audrey Hays also did that?

6 A. I would have no idea.

7 Q. Do you recall a discussion with Lisa  
8 Stein or Audrey Hays prior to the filing of the  
9 original Complaint, whether you agreed with all of  
10 its contents or were okay with filing it?

11 A. A discussion with?

12 Q. A discussion with Lisa Stein or Audrey  
13 Hays.

14 A. No.

15 Q. No, you don't recall or, no, it didn't  
16 occur?

17 A. No, it didn't occur.

18 Q. You can put that off to the side  
19 anyway.

20 Let me show you what I've previously had  
21 marked as Exhibit 29 (indicating).

22 MR. CALIHAN: I'm sorry. What number is  
23 this?

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1 MR. RAMSEY: 29.

2 MR. CALIHAN: Okay.

3 BY MR. RAMSEY:

4 A. Okay.

5 Q. Have you ever seen Exhibit 29 before?

6 A. Yes.

7 Q. Exhibit 29 looks like an e-mail from  
8 Audrey Hays to you dated June 3, 2016 with a  
9 subject line, "We can make the change that Mark  
10 suggested," correct?

11 MR. BROOK: The subject line (indicating).

12 THE WITNESS: The subject line?

13 MR. BROOK: That's what he's reading from.

14 BY MR. RAMSEY:

15 A. Yes.

16 Q. Do you recall receiving this e-mail?

17 A. I know it was sent to me. I don't  
18 really recall it, but I can't deny that it did not  
19 come to me.

20 Q. The first sentence of the body of the  
21 e-mail indicates, "With this agreement signed, I  
22 can sign the lawyer's proposal." Do you know what  
23 agreement Audrey was referring to?

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1           A.    I really can't recall the agreement  
2   that she is referring to on this.

3           Q.    She next writes, "Paul will need a  
4   couple of weeks to critically think this through  
5   for me." Do you know who Paul is?

6           A.    I believe it's -- honestly I really  
7   don't know who Paul is. It's somebody that might  
8   advise her. I don't know.

9           Q.    Do you recall any discussions with  
10   Audrey about who this Paul is?

11          A.    Somebody that she referred to that she  
12   will get some advice from.

13          Q.    Do you know that he was a lawyer?

14          A.    Pardon me?

15          Q.    Do you know whether or not he was a  
16   lawyer?

17          A.    No, I do not.

18          Q.    Do you know what she was relying on  
19   Paul to critically think through?

20          A.    No.

21          Q.    She next writes, "I now understand why  
22   you wanted to pursue this suit." Were you the one  
23   pushing Audrey and Lisa to proceed with the

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1 lawsuit?

2 MR. BROOK: Objection to the form.

3 BY MR. RAMSEY:

4 A. No.

5 Q. Do you know why she was writing that  
6 you were the one that wanted to pursue the lawsuit?

7 MR. BROOK: Objection to the form.

8 BY MR. RAMSEY:

9 A. Just the context of the lawsuit, she  
10 agreed that there were things that needed to be  
11 addressed on how Slocum and Sons was acquired. I  
12 think that that was the gist of what she was trying  
13 to say in here.

14 Q. Yes, but she indicated that you were  
15 the one that wanted to pursue it, correct?

16 A. Yes.

17 Q. Did you respond to this e-mail?

18 A. I don't remember.

19 Q. If you did, would you have a record of  
20 it?

21 A. I would, yes.

22 Q. I'd ask you to check your records, and  
23 if you have a response, please provide it to Mr.

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1 Brook.

2 Is there a reason or do you have an  
3 understanding why Lisa is not copied on this e-mail  
4 exchange?

5 A. No.

6 Q. As of June of 2016, did Audrey and Lisa  
7 get along, to our understanding?

8 A. Yes.

9 Q. Did you and Audrey get along as of June  
10 of 2016?

11 A. Yes.

12 Q. When the three of you were discussing  
13 the possibility of a lawsuit, I think you told me  
14 that those conversations were generally on the  
15 telephone?

16 A. Yes.

17 Q. Do you recall any e-mail exchanges  
18 between the three of you discussing the substance  
19 of the lawsuit?

20 A. No, I do not.

21 Q. I show you what we marked as Exhibit  
22 30. Let me know when you've had a chance to review  
23 it (indicating).

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1 A. No, no, I've seen it.

2 Q. Had you seen Exhibit 30 prior to today?

3 A. Yes.

4 Q. Exhibit 30 is entitled Letter of  
5 Agreement Among Cousins Concerning Eber Brothers  
6 Lawsuit and it has a date of June 1, 2016, correct?

7 A. That is correct.

8 Q. Is it a fair assumption that the  
9 agreement that Audrey was referring to in Exhibit  
10 29 was this agreement?

11 A. I'm not sure. I don't know.

12 Q. Was there any other agreement, to your  
13 knowledge, that Audrey was considering executing  
14 that she would have been reaching out to you two  
15 days after the date of the June 1, 2016 date of the  
16 letter, the cousins' letter agreement?

17 A. Not that I'm aware of.

18 Q. Regardless, what was the purpose of the  
19 cousins' letter agreement?

20 A. That if there was a settlement or an  
21 agreement with Lester and with Eber Brothers or  
22 Slocum that this is how we would set up our  
23 percentages of what we would receive.



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1 Q. Okay, but it wasn't just if there was a  
2 settlement, correct? It talks about essentially  
3 funding the lawsuit?

4 A. Yes, that's also included in here.

5 Q. Specifically paragraph one indicates  
6 that the three of you were each obligated to pay a  
7 third of the out-of-pocket expenses, otherwise  
8 known as costs, billed by your attorney?

9 A. Yes.

10 Q. At this point, had you retained Mr.  
11 Brook? As of June 1, 2016, had you retained Mr.  
12 Brook?

13 A. Yes.

14 Q. Paragraph one goes on to say that the  
15 one-third split for costs is only up to \$50,000.00  
16 and thereafter only you and Lisa will pay the costs  
17 going forward, is that accurate?

18 A. That is correct.

19 Q. How did that provision come to be in  
20 this agreement?

21 A. Audrey would only go up to a certain  
22 amount of out-of-pocket expenses.

23 Q. How come?

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1 A. It's you have to ask her.

2 Q. Did she indicate that it was going to  
3 be a financial burden for her to do more than that?

4 A. No, she just said that that's as far as  
5 she would go.

6 Q. Two goes on to say that her name is not  
7 even going to appear as being responsible for any  
8 costs, is that accurate?

9 A. Yes.

10 Q. Do you know whether the retainer  
11 agreement provides that only you and Lisa are  
12 responsible for costs?

13 A. Well, it will go back to one.

14 Q. Well, I understand that. This is the  
15 cousins' agreement. I'm talking about the retainer  
16 agreement with Mr. Brook's firm. Do you know that  
17 that agreement provides that only you and Lisa are  
18 responsible for costs?

19 A. I would have to look into that.

20 Q. As you sit here today, you don't know?

21 A. I'm not sure. I don't want to give you  
22 an answer that I'm not sure of.

23 Q. It would be consistent if it said that

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1 based on this agreement though, correct?

2 A. That would be correct.

3 Q. Number three then says in sum and  
4 substance even though Audrey would otherwise be  
5 entitled to fifty percent of any proceeds from a  
6 settlement or recovery, in return for not paying  
7 costs above \$50,000.00, she reduces her recovery to  
8 one-third, correct?

9 A. That is correct.

10 Q. Number four provides that any one of  
11 you can settle independently if you so choose?

12 A. Yes.

13 Q. Who drafted Exhibit 30?

14 A. We did collectively, Lisa, myself and  
15 Audrey collectively.

16 Q. Were there multiple versions of it that  
17 you exchanged?

18 A. I think there was more discussion than  
19 multiple versions.

20 Q. How was the document circulated amongst  
21 the three of you? Was it a hard copy or via  
22 e-mail?

23 A. I believe it was e-mail.

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1 Q. Do you recall more than one version or  
2 Exhibit 30 was the only version that ever existed?

3 A. I think once Audrey explained her  
4 position in this, this was basically the one  
5 version maybe with -- I don't know -- some  
6 exceptions, but this was the one version that we  
7 agreed upon.

8 Q. Who ultimately drafted this? Who put  
9 the finger to keypad?

10 A. Who wrote this up?

11 Q. Yes, who created it?

12 A. I don't remember who actually wrote  
13 this.

14 Q. Do you have a recollection one way or  
15 the other whether it was you?

16 A. No, it was not me.

17 Q. The second page of Exhibit 30 has some  
18 signature lines. This version is not signed. Does  
19 a signed version of Exhibit 30 exist?

20 A. Yes.

21 Q. Do you have a copy of that?

22 A. Yes.

23 Q. Is it fully executed by all three of

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1 you?

2 A. Yes.

3 Q. There's no mention in the cousins'  
4 agreement about how the attorney is going to be  
5 paid, is there? It indicates that you were  
6 responsible for costs. It doesn't refer to  
7 attorney's fees anywhere in Exhibit 30 I don't  
8 believe.

9 A. That is correct.

10 MR. BROOK: Objection to the form.

11 BY MR. RAMSEY:

12 Q. Actually let me make a document request  
13 for the fully executed cousins' agreement in your  
14 possession and any e-mails exchanging versions or  
15 discussing the cousins' letter agreement.

16 Are any of you responsible for out-of-pocket  
17 attorney's fees to fund this lawsuit?

18 A. I think you need to be more specific.

19 Q. That was a poorly asked question.

20 Are you currently paying out of pocket any  
21 attorney's fees, fronting attorney's fees?

22 A. Yes.

23 Q. What is the division of how those

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1 attorney's fees are being paid as between you,  
2 Audrey and Lisa?

3 A. Equally.

4 Q. Okay, and are you paying the full  
5 amount of your attorney's fees or less than full  
6 amount?

7 A. Less than full amount.

8 Q. So a portion of this lawsuit is being  
9 conducted on what is considered a contingency  
10 basis?

11 A. That is correct.

12 Q. Let me show you what I've had marked as  
13 Exhibit 31 (indicating).

14 A. Okay.

15 Q. Have you had a chance to review Exhibit  
16 31?

17 A. Yes.

18 Q. Have you seen that document before?

19 A. No.

20 Q. Today is the first time you've ever  
21 seen it?

22 A. Yes.

23 Q. Exhibit 31 looks to be an e-mail from

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1 Audrey Hays to an e-mail address pes@qcapital.com  
2 dated June 3, 2016. Did I read that correctly?

3 A. Yes.

4 Q. Do you know who is the owner or  
5 recipient of the e-mail address at  
6 pes@qcapital.com?

7 A. No I do not.

8 Q. Do you know whether that's the Paul  
9 that Audrey was referring to in one of the previous  
10 exhibits?

11 A. I do not know that.

12 Q. Are you familiar with an individual  
13 named Paul Shapiro?

14 A. No.

15 Q. In any event, Audrey is writing to this  
16 pes@qcapital.com and the second lines says, "That  
17 is why the first larger firm did not take the case  
18 -- did not want to wait for their money and no  
19 liquid cash available." Do you know what she is  
20 referring to there?

21 A. You would have to ask Audrey.

22 Q. Was Steve, the lawyer you met on the  
23 airplane, was he part of a larger law firm?

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1 A. Yes.

2 Q. Was the reason that he declined the  
3 representation because they did not want to proceed  
4 on a contingency basis?

5 A. No, no.

6 Q. What was the reason for his declining  
7 the representation?

8 MR. BROOK: You can answer to the extent  
9 that it does not involve any comments that were  
10 made by prospective attorneys about legal matters  
11 or the merits of the case.

12 BY MR. RAMSEY:

13 A. Then I cannot answer the question.

14 Q. The letter that you received, did that  
15 set forth the reasons for declining the  
16 representation?

17 A. Some, yes.

18 Q. Okay, and was at least one of the  
19 reasons the fee arrangement? Was at least one of  
20 the reasons for declining the representation the  
21 fee arrangement, that you were unable to reach an  
22 agreement as to how the fees would be paid?

23 A. One of the reasons?



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1 Q. Yes.

2 A. I thought I cannot answer that because  
3 at that time we were trying to retain him as our  
4 attorney.

5 Q. Well, you can answer if one of the  
6 disputes was about the fee arrangement. You can  
7 answer that.

8 MR. BROOK: Objection to the form.

9 BY MR. RAMSEY:

10 A. No, it really was not about the fee  
11 arrangement.

12 Q. So I'll ask again, do you have any idea  
13 what Audrey was referring to when she said they did  
14 not want to wait for their money and no liquid cash  
15 was available?

16 A. Again I will have to say you would have  
17 to ask Audrey what she meant by that.

18 Q. The next sentence that Audrey writes  
19 is, "This lawyer agreed to it for forty percent."  
20 Do you know who she is referring to when she writes  
21 "This lawyer"?

22 A. I do not.

23 Q. Do you know or do you have an

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1 understanding whether Mr. Brook's contingency is  
2 forty percent?

3 A. Do I understand?

4 Q. Yes.

5 A. Yeah, I understand what is his, yes.

6 Q. Is it forty percent?

7 A. I'm not answering that question. It's  
8 between me and my lawyer.

9 MR. BROOK: You can answer the question as  
10 to compensation.

11 BY MR. RAMSEY:

12 A. Okay, yes.

13 Q. Okay, so that would make sense that the  
14 lawyer she is referring to is Mr. Brook?

15 A. Yes.

16 Q. I don't think I asked you and I  
17 apologize if I did, but do you recall having any  
18 discussions with Audrey about the contingency  
19 arrangement with Mr. Brook for forty percent?

20 A. Could you be more specific?

21 Q. Sure, was there a discussion and I  
22 won't limit it to Audrey, whether it was Lisa or  
23 Audrey, did you have a discussion with either of

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1    them as to what an appropriate amount of the  
2    contingency fee would be, what percentage?

3           A.    Only when Mr. Brook proposed it and we  
4    agreed to it.

5           Q.    Okay, and again I don't want that. Any  
6    conversation that you had with Mr. Brook is none of  
7    my business.

8           A.    Yes, that's why I am trying to answer  
9    this without --

10          Q.    Understood.

11          A.    (Continuing) invading our privacy.

12          Q.    I'm just looking for conversations  
13    either between you and one or the other or both  
14    Lisa and Audrey about that percentage.

15          A.    Right.

16          Q.    Do you recall any discussions about it,  
17    either it was too high or it was too low or you  
18    wanted to talk more about it?

19          A.    We discussed it and we all agreed that  
20    it was fair.

21          Q.    Were any of those discussions via  
22    e-mail?

23          A.    Outside of this, I don't believe so.

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1 Q. I'd ask you again to check your  
2 records, your e-mail records, for that.

3 A. Sure.

4 Q. I show you what we've marked as Exhibit  
5 32 (indicating).

6 A. Okay.

7 Q. Have you had a chance to review Exhibit  
8 32?

9 A. Yes.

10 Q. Prior to me handing it to you, had you  
11 ever seen Exhibit 32?

12 A. No.

13 Q. Exhibit 32 is an e-mail from Audrey  
14 Hays once again to that pes@qcapital.com e-mail  
15 address from October 30, 2016 with the subject  
16 being, "Eber lawsuit -- I NEED you!" Did I read  
17 that right?

18 A. Yes.

19 Q. Okay, and I know I asked you before,  
20 but you're not sure who the recipient  
21 pes@qcapital.com is. Audrey writes, "I am  
22 desperate for your help or we will lose this  
23 opportunity. Please speak with Mark on his cell

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1 any time." Do you know whether Audrey is referring  
2 to Mark Stein at that point? Do you know if that  
3 is Mark Stein's cell number?

4 A. Without speaking to Audrey about this,  
5 I can only say that if that is his cell number,  
6 then it was Mark Stein, but I don't know if that is  
7 his cell number. I don't recognize his cell  
8 number.

9 Q. Do you know whether he has a cell  
10 number with a 609 area code?

11 A. I believe so.

12 Q. The next line says, "Please tell Steve  
13 Cozen what type of lawyer we need and what our time  
14 frame is." Do you know who Steve Cozen is?

15 A. No.

16 Q. In the next line Audrey writes, "I am  
17 annoying my cousins, but they are ready to make a  
18 change if we can do it quickly." Do you have any  
19 idea what she was referring to there as far as  
20 annoying her cousins?

21 A. I have no idea what she is referring  
22 to.

23 Q. Was Audrey pushing either you or Lisa

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1 to change attorneys at that point?

2 A. She did not know who Brian was and was  
3 looking into other possibilities.

4 Q. Brian had been retained at this point  
5 though, correct?

6 A. What's the date on this?

7 Q. October of 2016.

8 A. Yes.

9 Q. Do you recall specific conversations  
10 with Audrey either verbally or over e-mail about  
11 making a change in lawyers?

12 A. No, not really, you know, you know, I  
13 should answer that the right way, no.

14 Q. Do you recall having any discussions  
15 with your sister Lisa about whatever concerns  
16 Audrey had in the possibility of changing  
17 attorneys?

18 A. No.

19 Q. Audrey next writes in this e-mail,  
20 Exhibit 32, "There is a good suit and with Brian's  
21 personal problems, we might get away from him  
22 easily." Do you have any idea what she is  
23 referring to there?

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1 A. No.

2 Q. Did she raise any issues or problems  
3 that she thought necessitated the change of  
4 attorneys?

5 A. She only mentioned one time Brian's  
6 work schedule and that was it.

7 Q. So other than that, you have no idea  
8 what she was referring to here?

9 A. No.

10 Q. Would it have been normal assuming --  
11 and I know you can't confirm this -- assuming that  
12 cell phone number is Mark's, would it have been  
13 normal for Audrey to communicate or direct others  
14 to communicate with Mark?

15 MR. BROOK: I object to the form.

16 BY MR. RAMSEY:

17 A. I would not know that. I would not  
18 know what normal was for Audrey and Mark.

19 Q. Where does Mark practice? Do you know?

20 A. In New Jersey.

21 Q. Do you know what type of attorney he  
22 is?

23 A. I think general, just a --

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1 Q. Just a general practitioner?

2 A. Yeah.

3 Q. Ultimately no change was made with  
4 counsel though as a result of whatever concerns  
5 Audrey had?

6 A. That is correct.

7 Q. Let me show you what we marked as  
8 Exhibit 33 (indicating).

9 A. That looks like a government document.

10 Q. A Michael Flynn assessment?

11 A. Yeah, no, I've read it. I'm sorry.

12 Q. Prior to me handing this document to  
13 you, had you seen Exhibit 33?

14 A. I honestly do not remember seeing this.

15 Q. Once again Exhibit 33 is an e-mail this  
16 time to you, correct, dated December 13, 2016?

17 A. That is correct.

18 Q. It's short, so I'll just read it.  
19 Audrey writes, "Wow, how fascinating. People don't  
20 even get a chance to keep their name out of the  
21 press. You and I are left to hold the fort while  
22 Lisa escapes. Hope it is quiet." What was Audrey  
23 referring to here?



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1 A. I'm sorry. I honestly do not know.

2 Q. Do you know whose name was in the press  
3 that she was referring to?

4 A. The only thing I can think of is that  
5 looking at the date it's when there is a  
6 publication that comes out every single day through  
7 our industry, there was an article in our industry  
8 that listed the lawsuit at the time. It came out  
9 right before the holidays, if I'm not mistaken.  
10 That's all I can think of what she might be  
11 referring to. I don't know.

12 Q. This e-mail would have been sent to you  
13 after the lawsuit had been filed, correct?

14 A. Yes.

15 Q. Okay, and it seems like she's  
16 suggesting that you were mentioned, your name was  
17 mentioned and her name was mentioned, but Lisa  
18 wasn't. Is that your understanding of what she is  
19 conveying here?

20 A. That's my understanding of what she's  
21 conveying, but I'm not sure if that's exactly how  
22 the article read.

23 Q. Do you recall having a discussion with

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1 her about whatever issue she is raising here?

2 A. No, no.

3 Q. Do you know whether she addressed this  
4 issue that she had in any way with Lisa?

5 A. That I don't know.

6 Q. Lisa is not copied on Exhibit 33,  
7 correct?

8 A. Not that I can see, no, but there are a  
9 lot of lines drawn on here but no.

10 Q. There are a lot of lines.

11 A. Yeah, no.

12 Q. I want to jump back. I want to ask you  
13 a question and then we can take a quick break.  
14 Before lunch about legal disputes or potential  
15 legal disputes that your company had, one question  
16 I asked you about was about the teamsters and I  
17 think you gave some testimony about what you  
18 thought the dispute might have been about. I want  
19 to refine the question a little bit more on the  
20 issue with the teamsters' withdraw liability. Do  
21 you have any recollection of anything to do with  
22 that?

23 A. Explain withdraw liability.

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1 Q. Well, if you know what I'm talking  
2 about, that's great. If you don't, let me know  
3 that. Do you have any recollection from your time  
4 at Eber that there was an issue with the teamsters  
5 relating to withdraw liability?

6 A. No.

7 Q. Any recollection from whatever source  
8 that Lester ultimately had to pay \$600,000.00 or so  
9 out of his own pocket to settle that with the  
10 teamsters?

11 A. Out of his own pocket?

12 Q. Yes.

13 A. No.

14 MR. RAMSEY: Off the record.

15 (Whereupon, an off-the-record discussion was  
16 held.)

17 BY MR. RAMSEY:

18 Q. All right, Mr. Kleeberg, I'm going to  
19 ask a couple of questions. Then I'm going to go  
20 through my notes and turn it over to Mr. Calihan.

21 You testified a few moments ago that based  
22 upon the articles that Lisa provided to you that  
23 you thought Slocum was acquired in an improper

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1 manner. Did you gain an understanding either from  
2 those articles or from any source that had Lester  
3 not paid various liabilities of Slocum and Sons  
4 that the company would have been liquidated?

5 MR. CALIHAN: I couldn't hear the question.  
6 I'm sorry.

7 MR. RAMSEY: Sure, can you read it back?

8 (The above-requested question was then read  
9 by the reporter.)

10 MR. CALIHAN: That Lester had not paid what?

11 MR. RAMSEY: Liabilities.

12 BY MR. RAMSEY:

13 A. Did I have any understanding of that?

14 Q. Yes.

15 A. Not really because I really believed  
16 that after especially seeing the letter that stated  
17 what a great investment opportunity this is and how  
18 well we could do in a franchise state and how  
19 franchise states traditionally and for the most  
20 part make money, I honestly could not comprehend  
21 how bad Lester was saying that Slocum was, so for  
22 me, no, I did not -- I did not understand that at  
23 all or accept that.

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1 Q. As you sit here today, do you have any  
2 knowledge or understanding of what liabilities of  
3 Slocum Lester actually did pay personally?

4 A. All I know is from what I saw that he  
5 put in \$500,000.00 from what I've read from these,  
6 read from these, but I've never seen -- I never saw  
7 a check or anything.

8 Q. It's fair to say that you don't have a  
9 complete picture of what liabilities Lester paid on  
10 behalf of Slocum and Sons?

11 A. That is true.

12 Q. Real briefly back to the contingency  
13 arrangement that you did have in this lawsuit, you  
14 indicated that you're paying at least some  
15 attorney's fees, all three of you, out of pocket?

16 MR. BROOK: Objection to the form.

17 BY MR. RAMSEY:

18 A. We're not paying attorney's fees.  
19 We're paying expenses.

20 Q. You're paying the costs?

21 A. Yes.

22 Q. That's what the cousin's agreement  
23 addressed, correct?

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1 A. That is correct.

2 Q. So, in other words, if there was a cost  
3 that had to be fronted, that would be part of that  
4 \$50,000.00, up to \$50,000.00, that the three of you  
5 were splitting in thirds?

6 A. That is correct.

7 Q. Yes, but you're not actually paying a  
8 fee any recovery for attorney's fees to be part of  
9 that contingency?

10 A. That is correct.

11 MR. RAMSEY: I'm going to go through my  
12 notes here, but in the interest of time I'm going  
13 to pass it over to Mr. Calihan.

14 EXAMINATION BY MR. CALIHAN:

15 Q. I'm Rob Calihan. We met. I represent  
16 the estate of Elliott Gumaer --

17 A. Sure.

18 Q. (Continuing) whom I've sometimes heard  
19 sometimes referred to as Mike, I think.

20 A. Okay.

21 Q. You knew Mr. Gumaer?

22 A. Yes, I did.

23 Q. Did you know him as Mike or Elliott?

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1 A. Both.

2 Q. Okay, so if I say "Mike", there would  
3 be no misunderstanding?

4 A. That is correct.

5 Q. Good. Let me go back and just follow  
6 up for a minute the last set of questions. You  
7 said and you said earlier in your testimony that  
8 because Connecticut was a franchise state that it  
9 was fair to assume that Eber-Connecticut was doing  
10 very well or would do very well? I wasn't sure  
11 what your testimony was.

12 A. Well, being in a franchise state, it's  
13 very difficult to lose its supplier. With that  
14 being said, it was hard for me to comprehend that  
15 after we or Lester decided to acquire Slocum why we  
16 would acquire a company that supposedly was doing  
17 well at the time and had suppliers that were intact  
18 that within a short period of time was all of a  
19 sudden losing money and that to me was very  
20 confusing and it was never really explained to me  
21 what was happening.

22 Q. When you say it was never really  
23 explained to you, who did you ask what was

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1     happening?

2             A.     I discussed it at times very briefly  
3     with Lester but more so with John Ryan, our CFO,  
4     and to be honest with you, I was never privied to  
5     how we acquired it, what it entailed and all I was  
6     told at the time was that this would be a  
7     tremendous pickup because it would help solidify us  
8     in the market as massive consolidations were going  
9     on and this was a smart move and I know Lester and  
10    I had always talked about that it would be great to  
11    be in a franchise state because most distributors  
12    make money.

13            Q.     Most distributors, but is it fair to  
14    say, however, that in a franchise state not all  
15    distributors necessarily make money?

16            A.     I couldn't make that assessment.

17            Q.     Are you familiar with any other  
18    distributors that were in Connecticut at the time?

19            A.     I know of other distributors, yes.

20            Q.     Who do you know of?

21            A.     Andy Eder I know, E-D-E-R.

22            Q.     Did you know the Maglioccos?

23            A.     I knew the Maglioccos. I knew them. I



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1 had had interactions with them through conventions.

2 Q. With whom?

3 A. With --

4 Q. John?

5 A. With John Magliocco.

6 Q. Is it fair to say that they're fairly

7 fierce competitors?

8 A. Yee.

9 MR. CALIHAN: Off the record.

10 (Whereupon, an off-the-record discussion was  
11 held.)

12 BY MR. CALIHAN:

13 Q. So it's fair to say that  
14 Eber-Connecticut's success wasn't guaranteed?

15 A. Well, there's no guarantee.

16 Q. There's no guarantee? You can have  
17 others competing distributors come along and take  
18 away suppliers?

19 A. No.

20 Q. You cannot shift a single supplier in a  
21 franchise state?

22 A. There are rules in Connecticut that  
23 will allow a supplier to leave, but the distributor

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1 will be compensated and I believe there has to be a  
2 set of circumstances before they can leave.

3 Q. Why is it that a distributor could  
4 fail, however, in a state like Connecticut?

5 A. By over-purchasing, whether it's in  
6 wine, spirits, and then overpaying your employees.

7 Q. Yes, but it cannot be harmed by  
8 competition is your testimony?

9 A. No, I didn't say that. I did not say  
10 that.

11 Q. Let me ask you.

12 A. If you don't have the right lines, if  
13 you don't have the right spirits and everything,  
14 sure, there could be it could be an issue.

15 Q. Let's go back for a moment to Exhibit  
16 13. Can you take a look? This is the e-mail that  
17 you sent to Lester on October 9, 2009. Do you see  
18 it?

19 MR. BROOK: That (indicating).

20 BY MR. CALIHAN:

21 Q. Do you see it?

22 A. Yes.

23 Q. You saw it before. Can you read the

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1 first sentence or the first three sentences into  
2 the record?

3 A. "Lester, thank you again for your help,  
4 support and guidance. I can't tell you enough how  
5 much it means to me. You have always been there  
6 for me and my family. I will never forget that."

7 Q. At that point, for how long had you  
8 worked for Lester? Starting in high school it's  
9 fair to say?

10 A. Well, really as a full-time employee  
11 since 1975.

12 Q. So that would be by then it's  
13 thirty-four years?

14 A. That is correct.

15 Q. Were the sentiments that you conveyed  
16 in the first three sentences of Exhibit 13, were  
17 they sincere?

18 A. Yes, they were. They were. I  
19 appreciated what Eber Brothers and Lester being the  
20 president had provided my family.

21 Q. Were you fond of Lester at the time?

22 A. I was fond of Lester as far as working  
23 with him.

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1 Q. Did you trust him?

2 A. Not always.

3 Q. What do you mean by that?

4 A. Because I was never brought into the  
5 inner circle of what was really going on.

6 Q. Did you feel that you had ever been  
7 misled by Lester?

8 MR. RAMSEY: Form.

9 BY MR. CALIHAN:

10 A. That's a very open question. Did I  
11 feel? Sure, but I can't unless you're being  
12 specific.

13 Q. Can you give any examples?

14 A. Well, when Eber Brothers shut down, he  
15 had offered me the company in Ohio, a brokerage  
16 company. He told me to go out to Columbus and look  
17 for a place to stay. Within a week after that  
18 offer was made, he had ended up making a deal with  
19 Southern and it was no longer available for me.  
20 Little things to major things like that, those were  
21 things that were very disconcerting to me,  
22 especially at a time when I had nothing to look  
23 forward to at that point.

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1 Q. You had nothing to look forward to at  
2 that point because Southern had come in and  
3 disseminated the company?

4 A. Well, do you want to get into this at  
5 this point on how Southern disseminated this  
6 company?

7 Q. Well, actually I was going to ask you  
8 that. It was in a different section of my outline,  
9 but let's go.

10 A. Okay, Southern offered us -- and again  
11 I don't know the numbers -- to purchase us.

12 Q. Right.

13 A. They had two different offers from what  
14 I understand according to what I was told. My  
15 mother said to me that there were offers made, but  
16 she never told me any amounts or whatever. Because  
17 we collectively and more so Lester decided that he  
18 could fight Southern, contrary to how I felt at the  
19 time that I didn't think we had any chance against  
20 a multi-billion dollar company, that company went  
21 down. Now it happens.

22 Q. Which company went down?

23 A. Eber Brothers.

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1 Q. Right.

2 A. Now I'm not saying that that hasn't  
3 happened at other family businesses. You take your  
4 shots, you do the best you can and it can happen,  
5 but Southern didn't disseminate us in the sense  
6 that they gave us the opportunity to do something.  
7 We, Lester and the Eber Brothers, decided that they  
8 did not want that, which is an irony because then  
9 soon after Lester went to work for Southern.

10 Q. What was the first hostile act that  
11 Southern took against Eber Brothers after their  
12 offer had been rejected?

13 MR. BROOK: Objection to the form.

14 Go ahead.

15 MR. CALIHAN: The reason? The basis?

16 MR. BROOK: "Hostile act" could mean  
17 anything.

18 BY MR. CALIHAN:

19 Q. Do you understand "hostile act"?

20 A. Yes.

21 Q. What do you understand it to mean?

22 A. What did they do to detrimentally hurt  
23 us.

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1 Q. Okay, and using that definition, can  
2 you answer the question?

3 A. The major one was when I got a call  
4 from one of our suppliers who worked in New Jersey  
5 at the time or actually worked I believe it's  
6 either New Jersey or for our distributor warning  
7 me. He called me on a Sunday night telling me,  
8 "You better get hold of your uncle because the next  
9 day you're going to lose anywhere from sixty to  
10 seventy percent of your top management and sales  
11 reps between Syracuse and Albany, some in Buffalo  
12 and some in Rochester the following morning through  
13 faxes." I called Lester up. He wasn't really --  
14 he didn't really believe that that could take  
15 place. I drove to Rochester. We sat there and saw  
16 all these resumes come through that -- not resumes,  
17 I'm sorry --

18 Q. Letters of resignation?

19 A. (Continuing) letters of resignation  
20 that they had left us to go to Southern.

21 Q. Do you know why they left?

22 A. Because Southern had told them that we  
23 would no longer be in business and they gave them

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1 guaranteed contracts, which we had at that time  
2 never did.

3 Q. Isn't it the case that Southern  
4 significantly increased the guaranteed  
5 compensation?

6 A. Yes, very true.

7 Q. The guaranteed compensation for the  
8 lead salesmen at least?

9 A. Not just the lead salesmen, for anybody  
10 they took.

11 Q. Also a much better car with the deal?

12 A. I don't know. The car part I don't  
13 know.

14 Q. Fair enough. Fair enough.

15 A. All I know is the salary.

16 Q. As of that day, as of the close of  
17 business that Monday, what condition was Eber  
18 Brothers in?

19 A. Scrambling.

20 Q. What, if anything, do you think they  
21 could have done at that point to salvage what was  
22 going on?

23 A. I think at that point the handwriting



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1 was on the wall.

2 Q. It was basically over?

3 A. I think at that point because it forced  
4 us to have to go out and hire people at a much  
5 higher price and it became unaffordable for us to  
6 compete in the marketplace, which eventually caused  
7 us to lose our suppliers.

8 Q. Did the suppliers start leaving also  
9 when they realized that you lost your key  
10 salespeople?

11 A. Yes.

12 Q. You testified earlier that you -- I  
13 don't mean to put words in your mouth --  
14 essentially were troubled by and did not like the  
15 manner in which you thought that Lester had taken  
16 Eber-Connecticut out of the family business, is  
17 that correct?

18 A. That is correct.

19 Q. Can you tell me again what about or  
20 what was it about the way that he did that that  
21 concerned you?

22 A. It was part of our family business. It  
23 was always part of our family business after we

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1 acquired it. There was never any indication  
2 whatsoever in any correspondence that I saw or that  
3 I ever heard from my mother, sister or anybody that  
4 that company would eventually go over to Alexbay.

5 Q. Your mother did not discuss these sorts  
6 of affairs with you though, isn't that correct?

7 A. She did not get into any details, but  
8 she did ask the question was Slocum still part of  
9 the company, and at that time when she asked me, I  
10 said, of course, there was no reason why it  
11 wouldn't be.

12 Q. When you learned of the court  
13 proceeding that resulted in Slocum being  
14 transferred, did you have any idea how much money  
15 Lester had loaned the Eber companies?

16 A. That the Eber companies or Slocum?

17 Q. Let's start with the Eber companies and  
18 then include Slocum.

19 A. How much he personally loaned?

20 Q. How much he personally loaned.

21 A. The Eber companies?

22 Q. Yes.

23 A. No, I do not know the amount that he

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1 put into the Eber companies.

2 Q. Do you know how much he had loaned  
3 Slocum?

4 A. At that time?

5 Q. Yes.

6 A. No, I only knew that he was  
7 contemplating it because we had a conversation that  
8 he was going to look at his whole life insurance  
9 policies to use that as, you know, whatever loan  
10 monies he was going to put in.

11 Q. When did that conversation occur?

12 A. Shortly after, I believe it was shortly  
13 after Eber Brothers liquidated or back in 2007,  
14 something like that or 2008, I'm not really sure on  
15 the date.

16 Q. Did you press him for details?

17 A. No.

18 Q. After you learned about the foreclosure  
19 action, the 2012 action, that you discovered  
20 because you had seen those articles on the  
21 Internet, correct?

22 MR. BROOK: Objection to the form.

23 BY MR. CALIHAN:

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1 A. When you say "foreclosure" --

2 Q. You said that articles had been brought  
3 to your attention that your sister had found on the  
4 Internet, correct?

5 A. That is correct.

6 Q. What did those articles tell you?

7 A. Without having them right in front of  
8 me, that basically not only was Eber Brothers  
9 liquidated and a lot of people lost their jobs, but  
10 it went on to say how Slocum, which was part of  
11 Eber Brothers, was acquired by Alexbay and a couple  
12 of investors.

13 Q. Did you come to have an understanding  
14 as to how that occurred?

15 A. I read how Lester used an attorney in  
16 Rochester, New York or used him in Rochester, New  
17 York to go in front of a judge to acquire Slocum  
18 through his Alexbay company.

19 Q. Did you understand that part of that  
20 action involved how much money Lester had loaned at  
21 the time?

22 A. Please rephrase that.

23 Q. Did you understand when you were

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1 looking at the foreclosure action that one of the  
2 issues was how much money Lester was owed by and  
3 now I'll talk about the Eber companies and Slocum  
4 together.

5 MR. BROOK: Objection to the form.

6 BY MR. CALIHAN:

7 A. Not in those articles.

8 Q. Did you come to understand that?

9 A. Sometime later.

10 Q. When?

11 A. When counsel showed us documents,  
12 documents from you or from your group.

13 Q. Do you know how much money had been  
14 loaned by Lester?

15 A. All I know is that originally the  
16 number was 500,000 and then there was something. I  
17 think it was 3 million or something like that.

18 Q. Did you ever ask Lester how much he had  
19 loaned?

20 A. No.

21 Q. Did you ever think before suing him  
22 perhaps asking him how much he loaned?

23 A. No, after reading those articles.

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1 Q. Why not?

2 A. Because at that point there was no  
3 point for me to approach it anymore.

4 Q. So you had no interest in asking him  
5 how much he had loaned?

6 A. No.

7 MR. BROOK: Objection to the form.

8 BY MR. CALIHAN:

9 Q. What did you actually know about the  
10 value of Eber-Connecticut after you had read those  
11 articles?

12 A. My only knowledge of Eber  
13 Brothers-Connecticut was that based on what I knew  
14 in the industry, I could only make an assumption  
15 that the value of that company in my opinion -- and  
16 again I can't substantiate this -- is it was worth  
17 probably close to \$20 million.

18 Q. What did you base that on?

19 A. I based it on other companies that in  
20 The Beverage Journal and in the beverage media it  
21 shows what the gross sales are for all these  
22 companies and you can kind of decipher off of that  
23 what companies are supposed to be worth, but it

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1 doesn't give you all the information that you would  
2 need to make an accurate assessment of what a  
3 company is really worth.

4 Q. What information does it not give you  
5 that you would need?

6 A. It doesn't give you all the liabilities  
7 and everything else, so it does, you know, it gives  
8 you a barometer of what you would think it would be  
9 worth.

10 Q. What information did you discovery  
11 about Slocum when you looked at that source or  
12 sources?

13 A. At that time going back that they were  
14 doing a nice volume and that they were -- I forgot  
15 the exact number -- they looked like they were  
16 profitable at the time.

17 Q. So you had the volume figures?

18 A. At the time I looked at it, but I never  
19 -- I never consciously wrote them down because  
20 there was nothing for me to be involved in when it  
21 came to Slocum.

22 Q. So is it fair to say when you decided  
23 to proceed with this lawsuit, you really had no

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1 idea of what the value of Slocum was?

2 A. I did not have a legitimate idea.

3 Q. Yes, and you didn't know how much  
4 Lester owed to Slocum and/or the Eber companies?

5 MR. BROOK: Objection to the form.

6 BY MR. CALIHAN:

7 Q. At the time.

8 A. All I could tell you is what I read,  
9 but I never saw anything from Lester that showed  
10 that he had put that kind of money into the  
11 company.

12 Q. Yes, and you never made any direct  
13 inquiries about what the value of Slocum was?

14 A. No.

15 Q. You never contacted Lester to try to  
16 find out?

17 A. I have never contacted Lester after we  
18 filed the lawsuit.

19 Q. I asked you before if Lester had ever  
20 misled you and you described it and I wasn't quite  
21 sure what you said, but let me ask the question  
22 again in the sense of did Lester ever lie to you  
23 about an actual fact?



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1 MR. BROOK: Objection to the form.

2 BY MR. CALIHAN:

3 A. About an actual fact?

4 Q. Yes.

5 A. You know something? I don't recall  
6 anything that specific except for when Eber  
7 Brothers was liquidated the fact that we could  
8 never work for the principals of Southern and that  
9 he and I could never last and then he decides to go  
10 to work for Southern Wine and Spirits. I don't  
11 know if you want to call that a lie, but I'd say  
12 that's very misleading in my opinion. A specific  
13 lie, I can't give you a specific lie off the top of  
14 my head.

15 Q. Tell me what is it he said about not  
16 being able to work for Southern.

17 A. He said that, "You and I both know that  
18 it would be impossible for us to go to work for the  
19 Chaplins in the way that they would run the  
20 business." I wanted us to keep upstate under their  
21 umbrella. Lester did not believe that that would  
22 be a smart move because we would be still working  
23 for the Chaplins. He said, "There is no way we

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1 should even consider that idea and we should fight  
2 them," and ultimately he ends up working for  
3 Southern and the rest is history.

4 Q. How much time passed between that  
5 conversation and when he ended up working for  
6 Southern?

7 MR. BROOK: Objection to the form.

8 BY MR. CALIHAN:

9 A. I don't know.

10 Q. Do you have any idea or any  
11 recollection?

12 A. I would assume right after the  
13 liquidation was over, officially over, then he  
14 would probably have negotiated something with  
15 Southern.

16 Q. Do you believe that when he told you  
17 that you could never work for Southern that he knew  
18 that that was not, in fact, the case?

19 A. At the time?

20 Q. At the time.

21 A. No.

22 Q. Let's go to Mike Gumaer. We'll call  
23 him Mike, okay?

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1 A. Sure.

2 Q. When did you meet Mike Gumaer?

3 A. I met him a few times over the years,  
4 but I didn't have a lot of direct interaction with  
5 him.

6 Q. You met him two times?

7 A. Two or three times.

8 Q. What do you recall about those times?

9 A. Amicable.

10 Q. Social settings?

11 A. They were at the office just basically  
12 asking me how I was doing, how things were doing.

13 Q. So the two of you didn't discuss the  
14 business, Eber companies' business, or the Eber  
15 trust?

16 A. No.

17 Q. Did you ever receive any information  
18 from Mike Gumaer in writing about the Eber trust?

19 A. Not that I can recall, directly from  
20 Mike, no.

21 Q. Did you ever receive any information  
22 from Mike Gumaer indirectly about the Eber trusts?

23 A. No.

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1 Q. Are you aware of any communications Mr.  
2 Gumaer had with any other of the trust  
3 beneficiaries?

4 A. Only my cousin Audrey.

5 Q. What do you know about those contacts?

6 A. Only that Audrey was not happy with the  
7 interactions she had with Mr. Gumaer.

8 Q. Did she tell you why?

9 A. She did not believe what he was telling  
10 her was the truth.

11 Q. What interactions was she referring to  
12 when she said that?

13 A. That I don't know. It had to do with  
14 whatever that settlement was, whatever she was  
15 asking for. She did not feel that Mike Gumaer was  
16 being up front with her.

17 Q. Did you have any idea what she was  
18 asking for?

19 A. Something that had to do with her  
20 shares of the Eber companies.

21 Q. Do you have any idea when that  
22 communication occurred?

23 A. Oh, God, years, twenty years,

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1 twenty-five years ago maybe.

2 Q. Is that essentially the sum and  
3 substance of what you recall about her complaint  
4 about Mr. Gumaer?

5 A. I don't know. I can't answer for her  
6 how many times she interacted with Mike, so it's  
7 not fair for me to make that comment.

8 Q. What do you think Mike Gumaer did wrong  
9 in connection with this matter?

10 A. Well, I'm going to be very honest with  
11 you. I was not there and I had nothing to do with  
12 it. The only other person that had -- that did not  
13 like Mike Gumaer was my mother.

14 Q. Let's first get your answer and maybe I  
15 just did to what you believed Mr. Gumaer did wrong  
16 in connection with the transactions that gave rise  
17 to this lawsuit.

18 A. That he allowed Lester to orchestrate  
19 this deal without notifying the family, listen, if  
20 you're going down this route and you brought up  
21 letters, you brought up all these other things,  
22 there was never ever anything said to my mother  
23 that I'm aware of -- now again when you depose my

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1 sister you can ask her that question or to Audrey  
2 you'll have to ask -- that ever stated that if they  
3 did not contribute money into this company to help  
4 with the financial sources that that company would  
5 no longer be part of the Eber family business, so  
6 there were things in there that just Gumaer whose  
7 responsibility was to the family, not to Lester,  
8 not to Wendy, not to me, not to them, for the whole  
9 family, that we felt that he did not represent the  
10 family in a proper way.

11 Q. We've looked at the exhibits where  
12 Lester asked family members whether or not they  
13 wanted to contribute funds to the company?

14 A. Correct.

15 Q. That's what you're referring to?

16 A. That is correct.

17 Q. Those communications?

18 A. Yes.

19 Q. Do you remember what year those  
20 communications occurred in? Was it 2009?

21 A. I think so. I never saw the letters,  
22 so I'm only going by what I'm seeing her.

23 Q. Didn't we see the letters today? Isn't

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1 that what you're referring to?

2 A. Yes, yeah, I mean I saw the letters  
3 earlier, you know, when we started going through  
4 the lawsuit, but when this was brought to my  
5 attention after my sister found these articles, I  
6 specifically tried to see if there was anything in  
7 there that indicated that if they do not invest  
8 money would they lose their interest in Slocum.

9 Q. If you look at Exhibit 19, --

10 A. Yeah.

11 Q. (Continuing) this is one of the  
12 communications you're referring to, is it not?

13 MR. BROOK: Objection to the form.

14 BY MR. CALIHAN:

15 A. That is.

16 THE WITNESS: Sorry.

17 MR. BROOK: That's okay.

18 MR. CALIHAN: Objection for?

19 MR. BROOK: The form.

20 MR. CALIHAN: On the basis?

21 MR. BROOK: On the basis that I don't  
22 believe that that is necessarily correct and I  
23 think it's confusing, I'm trying to avoid

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1 suggesting an answer, but I'm trying to explain it.

2 MR. CALIHAN: All right, we'll move forward.

3 BY MR. CALIHAN:

4 Q. You testified in response to, I think,  
5 two or three questions ago that there were  
6 communications and your complaint, if you will, was  
7 that the family was never told that if they didn't  
8 invest this money that the trust would lose the  
9 company, is that correct? That's in sum and  
10 substance?

11 A. That is correct.

12 Q. I said isn't it the case those  
13 communications occurred in 2009? I think if you  
14 look at Exhibit 19, in fact, it was in the 2010  
15 period, is that right?

16 A. That is correct.

17 Q. Okay, and when did the trust eventually  
18 lose the company or lose Eber- Connecticut?

19 A. I don't know the exact date.

20 Q. It was in connection with the 2012  
21 foreclosure, was it not?

22 A. Yes.

23 Q. So two years later?



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1 A. Yes.

2 Q. Do you have any reason to believe that  
3 when Lester was communicating with family members  
4 about the possibility of contributing funds in 2010  
5 that he knew the company what was going to happen  
6 in 2012?

7 A. I wouldn't know because I hadn't seen  
8 these letters.

9 Q. If you look at the second to last  
10 sentence on Kleeberg's 19, can you read that into  
11 the record?

12 A. On this 19?

13 Q. Yes, it's the one that starts, "I am  
14 working."

15 A. "I am working diligently to rebuild the  
16 company and maximize any returns that we may  
17 achieve."

18 Q. Do you have any reason to believe that  
19 that was not an accurate statement when he made it  
20 in March of 2010?

21 MR. BROOK: Objection to the form.

22 BY MR. CALIHAN:

23 A. No.

D. Kleeberg - Calihan - 12/19/18

1 Q. Did you have any direct communications  
2 with Canandaigua National Bank in connection with  
3 its role as a trustee?

4 A. Only when it came to when they were  
5 dissolving it and it had to do with the monies that  
6 were being sent back to my sister and myself, like  
7 I said.

8 Q. The occurrence in Surrogate's Court of  
9 a year or two ago?

10 A. Correct, that was the only  
11 communication.

12 Q. That was the only communication that  
13 you ever had with them?

14 A. Yes.

15 Q. You were asked a series of questions  
16 about the extent to which you reviewed the  
17 Complaint in this action and I recognize there have  
18 now been, I think, three, including the pending  
19 Third Amended Complaint.

20 A. Mmhmmm, yes.

21 Q. I forget the exact term you used, but  
22 maybe let me ask the question directly. Did you  
23 ever read any of the Complaints from start to

D. Kleeberg - Calihan - 12/19/18

1 finish?

2 A. I believe I read the first one from  
3 start to finish. The others I would skim through  
4 it to go through it and then rely on my attorney to  
5 fill in any questions I might have.

6 Q. When you use the term "skim", what do  
7 you mean by that?

8 A. I would take a look at it. I would  
9 look at it, proofread it, you know, you know, and  
10 just look to see if there was anything in there  
11 that I, number one, would not agree with it or,  
12 number two, just didn't understand it.

13 Q. Is it fair to say though when you say  
14 you skimmed the document, it means you really  
15 didn't read all of it?

16 A. Well, that's what I just said. I said  
17 I read the first one, but I did not thoroughly read  
18 the other two.

19 Q. Do you recall that the first one  
20 referenced another Complaint, a Complaint in what's  
21 sometimes called the Harris Beach litigation?

22 A. Yes.

23 Q. Did you review that Complaint?

D. Kleeberg - Brook - 12/19/18

1 A. Yes.

2 Q. Did you read that from the start to the  
3 end?

4 A. Yes.

5 Q. You did?

6 A. I did read it at the time, yes.

7 Q. In connection with your reading the  
8 first Complaint?

9 A. Yes.

10 MR. CALIHAN: I think that's all I have now.

11 MR. RAMSEY: I have a few more.

12 MR. BROOK: Sure, if you want, I actually  
13 have a few questions and then you guys can go on.

14 MR. RAMSEY: Sure, go for it, yes.

15 EXAMINATION BY MR. BROOK:

16 Q. I want to ask you about your company  
17 Prestige. What's the full name of that company?

18 A. It was Prestige Imports, Wine Imports.

19 Q. Was that your original choice for the  
20 name?

21 A. Yes.

22 Q. Had you ever considered any other names  
23 for that company?

D. Kleeberg - Brook - 12/19/18

1 A. At that time, no.

2 Q. How about was there ever a time when  
3 you considered starting a company that had the Eber  
4 name in it?

5 A. Yes.

6 Q. When was that?

7 A. That was prior to Prestige. I wanted  
8 to call it Eber Imports. I told Lester what my  
9 plans were and he instructed me not to use the word  
10 "Eber" because of his agreement with Southern that  
11 we should not use the name Eber in any way that  
12 referenced a liquor or wine company.

13 Q. What was your understanding at the time  
14 of what agreement with Southern he was referencing?

15 A. I did not get into it. My only thing  
16 was not to compete.

17 Q. What was your understanding as to who  
18 the parties were to that non-compete agreement?

19 A. Lester, Eber Brothers and then  
20 obviously myself, he did not want me to put that  
21 name out there because he felt that that would  
22 upset Southern Wine and Spirits and that would  
23 violate what he put together.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Approximately when was this  
2 conversation?

3 A. Oh, God, it would have to be back in  
4 2009 maybe, 2008, somewhere in there, right before  
5 I started Prestige Wine and Spirits.

6 MR. BROOK: That's all I have.

7 FURTHER EXAMINATION BY MR. RAMSEY:

8 Q. A few more.

9 A. Sure.

10 Q. In response to one of Mr. Calihan's  
11 questions, you indicated you felt misled when  
12 Lester ended up taking a consulting position with  
13 Southern?

14 A. Yes.

15 Q. Do you recall that testimony?

16 A. Yes, yes.

17 Q. Just to be clear, you were offered  
18 earlier, a potential position with Southern as  
19 well, correct?

20 A. No.

21 Q. Well, you had a discussion and you  
22 elected not to pursue it?

23 A. No.

D. Kleeberg - Ramsey - 12/19/18

1 Q. Well, that's what you told me earlier  
2 this morning I thought.

3 A. No, that's not what I said. What I  
4 said was I went there and they offered me no  
5 position, but they said they could create a  
6 position for me if I wanted to and I said no,  
7 thanks.

8 Q. So there was a position had you chose  
9 to pursue it?

10 A. There was no position.

11 Q. They told you they would create one?

12 A. They would try to create one because of  
13 Lester.

14 Q. Yes, but it was your decision not to  
15 pursue that?

16 A. That is correct.

17 Q. You have been asked a number of  
18 questions both by me and some by Mr. Calihan as  
19 well about various loans that Lester made and  
20 various liabilities of the Eber companies. Would  
21 you agree with me that to the extent that loans and  
22 liabilities exist, that would affect the value of  
23 Eber-Connecticut?

D. Kleeberg - Ramsey - 12/19/18

1 A. That would affect the value, no.

2 Q. Why wouldn't loans or liabilities  
3 affect the value?

4 A. Of my loans?

5 Q. No, no, no, no, no.

6 A. Oh, of loans?

7 Q. Of loans that Lester made to the Eber  
8 entities or the liabilities of the Eber entities  
9 would affect the liabilities of Eber-CT, would you  
10 agree with that?

11 A. If I was privied to see all the  
12 numbers, sure.

13 Q. Okay, and a similar question, I've  
14 asked you a number of questions about your  
15 awareness of loans that Lester's made and your  
16 awareness of various debts that Lester's paid. Is  
17 it fair to say that you just don't know one way or  
18 the other the extent of either the loans that  
19 Lester made or the debts that he paid?

20 A. That is correct.

21 MR. RAMSEY: Okay, that's all I have.

22 (Deposition concluded at 3:00 p.m.)

23 \* \* \*



1 I hereby CERTIFY that I have read the  
2 foregoing 250 pages, and that they are a true and  
3 accurate transcript of the testimony given by me in  
4 the above entitled action on December 19, 2018.

DANIEL KLEEBERG

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JACK W. HUNT & ASSOCIATES, INC. - GLOBAL SCHEDULING SERVICE  
1120 Liberty Building  
Buffalo, New York 14202 - (716) 853-5600

1 C E R T I F I C A T E

2 STATE OF NEW YORK )  
3 : SS.:  
4 COUNTY OF NEW YORK )

5 I, MAY JEAN WU, a Notary Public for and  
6 within the State of New York, do hereby certify:

7 That the witness whose examination is  
8 hereinbefore set forth was duly sworn and that such  
9 examination is a true record of the testimony given  
10 by that witness.

11 I further certify that I am not related  
12 to any of the parties to this action by blood or by  
13 marriage and that I am in no way interested in the  
14 outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 28th day of December 2018.

17

18

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22

23



MAY JEAN WU

JACK W. HUNT & ASSOCIATES, INC. - GLOBAL SCHEDULING SERVICE

1120 Liberty Building

Buffalo, New York 14202 - (716) 853-5600

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4                   convey to you in response to your  
5                   questions to him about these articles?

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